Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
September 10, 2015

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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In re:	)	Case No.: 14-16997-MKN
	)	Chapter 13
CURTIS BRYANT and ROBIN BRYANT,	)	
	)	Date: September 3, 2015
Debtors.	)	Time: 9:30 a.m.
	)	

MEMORANDUM DECISION ON CONFIRMATION OF DEBTORS' PROPOSED AMENDED CHAPTER 13 PLAN #5[1]

On September 3, 2015, the court held a hearing on confirmation of the Amended Chapter 13 Plan #5 filed in the above-captioned case. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On October 17, 2014, Curtis Bryant and Robin Bryant ("Debtors") filed a voluntary Chapter 13 bankruptcy petition through the law firm of Crosby & Fox, LLC ("Crosby Firm"). (ECF No. 1). The case was initially assigned for administration to Chapter 13 panel trustee Rick A. Yarnall (ECF No. 4), but later was reassigned to panel trustee Kathleen A. Leavitt. (ECF No. 12).[2]

[1] In this Memorandum, all references to "ECF No." are to the numbers assigned to the documents filed in the case or minute entries of the court clerk as they appear on the docket maintained by the clerk of the court. All references to "Section" are to the provisions of the Bankruptcy Code ("Code"), 11 U.S.C. §§ 101-1532, unless otherwise indicated. All references to "NRS" are to the provisions of the Nevada Revised Statutes.

[2] In this Memorandum, trustee Leavitt will be referred to singularly as the "Trustee" while the panel Chapter 13 trustees together will be referred to as the "Trustees." These Trustees administer the chapter 13 cases filed in the unofficial southern division (Las Vegas) of this

On November 14, 2014, Debtors filed their initial Chapter 13 Plan #1. (ECF No. 24). Later the same day, Debtors filed their amended Plan #2. (ECF No. 26). Ten days later, Debtors filed amended Plan #3. (ECF No. 32). A hearing on confirmation of the latter plan was scheduled for January 22, 2015. (ECF No. 35).

On December 8, 2014, Debtors filed their amended Plan #4. (ECF No. 45).

On December 17, 2014, the Trustee filed an opposition to the plan confirmation as well as a recommendation that the Chapter 13 proceeding be dismissed. (ECF No. 52).

On January 22, 2015, the plan confirmation hearing was continued to February 5, 2015. (ECF No. 60). On February 5, 2015, the plan confirmation hearing was continued to February 19, 2015. (ECF No. 65). On February 19, 2015, the plan confirmation hearing was continued to March 4, 2015. (ECF No. 70).

On March 5, 2015, Debtors filed their amended Plan #5. (ECF No. 74). A hearing on confirmation of Plan #5 was noticed to be held on April 2, 2015. (ECF No. 75).

On April 2, 2015, the Trustee filed an opposition to the confirmation of Plan #5 (ECF No. 82), and the hearing on confirmation of Plan #5 was continued to April 30, 2015. (ECF No. 83). The Trustee's opposition objected to plan confirmation on various grounds, including the Debtors' proposed modifications to Section 2.09 regarding a debtor's attorney's fees, and Section 5.04(a) regarding a debtor's duties after plan confirmation.

On April 30, 2015, the hearing on confirmation of Plan #5 was continued to June 11, 2015. (ECF No. 90).

On May 11, 2015, a "Debtors' Motion for En Banc Hearing" ("Joint Hearing Motion")[3]

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judicial district while chapter 13 cases filed in the unofficial northern division (Reno) are administered by panel Chapter 13 trustee William A. Van Meter.

[3] Although titled as a motion for an "en banc" hearing, Debtors actually sought a joint hearing before all of the active bankruptcy judges of the district, each of whom are assigned separate chapter 13 cases that include common issues. En banc hearings typically are reserved for appellate proceedings where a case is heard and decided by all of the members of an appellate court rather than a three-judge panel of the same court. For an appellate court with a large number of judges, an en banc proceeding may be conducted by a majority of the appellate judges. The bankruptcy court certainly is not an appellate tribunal where multiple judges are assigned to

was filed. (ECF No. 91).

On May 26, 2015, the Trustee filed an opposition to the Joint Hearing Motion. (ECF No. 93). The Trustee opposed an "en banc" proceeding as being unnecessary to resolve her objections to the alternative language in Plan #5 regarding a debtor's attorney's fees and a debtor's duties. See Trustee's Opposition at 4:6-10.

On June 11, 2015, the hearing on confirmation of Plan #5 was continued to September 3, 2015. (ECF No. 99).

On July 14, 2015, an order was entered requiring the instant case to be heard jointly ("Joint Hearing") with four other Chapter 13 cases pending in this judicial district filed by the Crosby Firm. Those cases are Julie Ann Evans and Craig Lee Evans, Case No. 14-13292-ABL, Willie Walerstein, Case No. 14-15419-BTB, Reynaldo Santos Castro, Case No. 14-14117-BTB, and Terrence Leon Joyce, Case No. 14-17769-LED. The purpose of the Joint Hearing was to allow common counsel for the various debtors to present arguments in connection with provisions in proposed Plan #5 that are also included in the Chapter 13 plans proposed in the other four cases, and for the Trustees to respond. In other words, the Joint Hearing was designed to allow common arguments to be presented with respect to common Chapter 13 plan provisions.

On July 16, 2015, Debtors filed their opening brief ("Debtor Brief") in support of plan confirmation. (ECF No. 101).

On August 6, 2015, the Trustee filed her opposition brief ("Trustee Brief"). (ECF No. 103).

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hear the same case. The bankruptcy court in this district, however, has held joint hearings in connection with common legal issues that arise in separate cases. See, e.g., Joshua Scott Mitchell and Stephanie Judith Mitchell, Case No. 07-16226-LBR, Memorandum Opinion (on motions for relief from stay brought in numerous separate cases by the Mortgage Electronic Registration System), Docket No. 99, filed March 31, 2009; Janis K. Martin, Case No. 05-28203-BAM, Cynthia L. Czipo, Case No. 05-28252-BAM, Joseph H. Langley and Debra L. Langley, Case No. 05-28254-LBR, and Kawailehua Clay, Case No. 05-28193 (joint hearing held on February 13, 2006 on separate requests for Chapter 13 attorneys' fees) [audio file available]; Carolyn Mary Schivo, Case No. 05-28163-BAM, Order to Show Cause (issued after joint hearing concerning 25 separate bankruptcy filings), Docket No. 39, filed December 22, 2005.

On August 20, 2015, Debtors filed their reply ("Debtor Reply"). (ECF No. 104).[4]

On September 3, 2015, the Joint Hearing was conducted for all five cases before all of the active bankruptcy judges in this judicial district. All of the debtors in those fives cases appeared through the Crosby Firm; separate bankruptcy counsel appeared on behalf of both Chapter 13 trustees. After arguments were presented, each of the matters was taken under submission.[5]

APPLICABLE LEGAL STANDARDS

Section 1321 of the Bankruptcy Code requires a Chapter 13 debtor to file a proposed plan.[6] Section 1322(a) sets forth the mandatory provisions of a Chapter 13 plan, including the submission of the debtor's future income, the payment in full of priority claims, and comparable treatment of claims within classes. 11 U.S.C. §§ 1322(a)(1, 2, 3). Section 1322(b) sets forth the permissive provisions of a Chapter 13 plan, including the classification of creditors, the vesting of estate property upon plan confirmation or at a later time, and "any other appropriate provision not inconsistent with" the Bankruptcy Code. 11 U.S.C. §§ 1322(b)(1, 9, 11).

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[4] Attached as Exhibit "1" to the Debtor Reply are copies of the "Bankruptcy Legal Services Contract" that the Crosby Firm entered into with the Debtors as well as one of the other clients involved in the Joint Hearing. Part II(C)(1) of that document ("Crosby Fee Agreement") sets forth the amount that the Crosby Firm charges as a standard fee for Chapter 13 representation and Part II(C)(2) then describes the "basic services" encompassed by the standard fee. Part II(C)(3) then describes the types of services that are not included as basic services. Both Part II(C)(1 and 2) of the Crosby Fee Agreement specify that the standard fee only covers basic services and that additional services and additional fees may be required in the case.

[5] The other matters are the subject of separate orders entered or to be entered by the bankruptcy judges assigned to those cases.

[6] Although counsel for the parties curiously argue the point, it cannot be seriously disputed that the Debtors not only have a right to file a proposed Chapter 13 plan, but are required to do so. In Bullard v. Blue Hills Bank, 135 S.Ct. 1686, 1694 (2015), the Supreme Court recently observed that the chapter 13 debtor before it retained "the valuable exclusive right to propose plans." The District of Massachusetts, in which that debtor's case arose, requires use of a model or form Chapter 13 plan. See Massachusetts Local Bankruptcy Rules ("MLBR"), Appendix 1, Chapter 13 Rules, Rule 13-4(a) ("A chapter 13 plan shall conform to MLBR Official Local Form 3, with such alterations as may be appropriate to suit the circumstances."). Nothing in the language or facts underlying the Bullard decision suggests that a Chapter 13 debtor's right to propose a plan is jeopardized by a local rule requiring the debtor to use a standard form or model plan.

Section 1325 requires the bankruptcy court to confirm a proposed Chapter 13 plan if certain conditions are met. Section 1325(a) sets forth nine separate requirements for a Chapter 13 plan to be confirmed. Among other things, a proposed Chapter 13 plan must comply with applicable provisions of the Bankruptcy Code, must be proposed in good faith, must pay unsecured creditors at least what they would receive in a Chapter 7 liquidation (best interests test), and the debtor must be able to make all the payments required by the plan (feasiblity). 11 U.S.C. §§ 1325(a)(1, 3, 4, 6). Section 1325(b) sets forth an additional requirement in the event the Chapter 13 trustee or an allowed unsecured creditor objects to plan confirmation. In such event, the Chapter 13 debtor must either pay all unsecured claims in full, or must devote all of his or her projected disposable income to the payment of unsecured creditors. 11 U.S.C. §§ 1325(b)(1)(A and B).

Section 1326(a)(1) of the Code requires a debtor to commence making monthly plan payments to the Chapter 13 trustee no later than 30 days after the case is commenced or the proposed plan is filed. Section 1326(a)(2) requires the Chapter 13 trustee to retain the plan payments and, upon plan confirmation, to distribute any payments in accordance with the plan as soon as practicable.

Section 1327 provides, inter alia, that all property of the bankruptcy estate vests in the Chapter 13 debtor upon plan confirmation, unless otherwise provided in the confirmed plan or the confirmation order. 11 U.S.C. § 1327(b).

Section 1329 allows a confirmed plan to be modified at the request of the debtor, the Chapter 13 trustee, or allowed unsecured creditor, to change the payments to a particular class or to extend the time for payments. 11 U.S.C. §§ 1329(a)(1, 2).

At plan confirmation, the burden of proof and persuasion rests with the proponent of the Chapter 13 plan. See In re Hardcastle, 2013 WL 5944042 at *3 (B.A.P. 9th Cir. Nov. 7, 2013); In re Welk, 526 B.R. 829, 834 (Bankr. D. Mont. 2015); In re Gilbert, 2015 WL 4556293 at *7 (Bankr. C.D. Cal. 2015). See also KEITH M. LUNDIN & WILLIAM H. BROWN, CHAPTER 13 BANKRUPTCY, § 217.1, at ¶ 1& n.1 (4th ed. rev. 2004), available at http://www.ch13online.com.

DISCUSSION

The Bankruptcy Rules Enabling Act authorizes the Supreme Court "to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure" in bankruptcy cases, as long as those rules do not "abridge, enlarge, or modify any substantive right." 28 U.S.C. § 2075. (Emphasis added). As authorized, the Supreme Court has adopted the Federal Rules of Bankruptcy Procedure ("FRBP") applicable in all bankruptcy cases.

In turn, FRBP 9029(a)(1) authorizes each judicial district to enact "local rules of practice and procedure" that are consistent with and not duplicative of federal law or the national bankruptcy rules.[7] FRBP 9029(a)(2) provides that local rules imposing a requirement of form "shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement."

The Local Rules of Practice ("Local Rules") for the United States District Court for the District of Nevada includes distinct provisions for practice before the bankruptcy courts. Those Local Rules specifically address the submission of proposed Chapter 13 plans. Local Rule 3015 expressly provides, in pertinent part, as follows:

> (a) Standard form of chapter 13 plans and orders confirming chapter 13 plans. Each chapter 13 standing trustee may issue a form chapter 13 plan, a form chapter 13 plan summary and a form order for confirming a chapter 13 plan. **Unless the court orders otherwise**, the **format** prescribed by the trustee **must be observed**. That standing trustee may, from time to time, revise the form plans, form plan summaries and orders. The trustee will reissue any revised form plans and orders with a notation of the effective date of the revision.
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> (b) Chapter 13 plan guidelines. Each chapter 13 standing trustee may issue guidelines for the administration of chapter 13 plans. The guidelines will set forth positions that the trustee will generally follow in administering plans. The guidelines may also set procedures for scheduling confirmation hearings, filing objections to confirmation, and submitting orders confirming chapter 13 plans. The standing trustees may, from time to time, revise the guidelines. The trustees will reissue any revised guidelines with a notation of the effective date of the revision.

(Emphasis added). The Chapter 13 trustees for this judicial district have adopted and published a

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[7] Local bankruptcy rules that are inconsistent with the corresponding national bankruptcy rules, for example, may not be applied to sanction a non-party witness. See Golden v. Bui (In re Pham), 2015 WL 5158536 at *9 (B.A.P. 9th Cir. Sept. 2, 2015).

standard form Chapter 13 plan ("Form Plan").[8]

The purpose of adopting a form Chapter 13 plan, both on a local basis or possibly on a national basis, was summarized by Judge Lundin in his leading treatise as follows:

> A standard form for the Chapter 13 plan makes a great deal of sense. Almost all Chapter 13 cases require approximately the same categories of information in the plan. Within a district and even across districts, no obvious purpose is served by nonstandard forms for the plan. A myriad of forms simply confuses the processing of Chapter 13 cases. The trustee and creditors are forced by nonstandard plans to search for the basic information necessary for noticing and confirmation. A standard form for the plan would guide all Chapter 13 players to the information that is important and reveal at a glance when there is a problem. Nonstandard forms multiply the opportunities for mistakes, confusion and deception.
>
> There is nothing in the Code or Rules to require or prohibit a bankruptcy court from establishing a standard form for the district. An Official Form for the Chapter 13 plan would be a great contribution to Chapter 13 practice. A national form would reduce mistakes with respect to noticing, would smooth out some of the local variations in Chapter 13 practice and would be warmly embraced by the credit community that currently struggles within districts and across the country with dozens or hundreds of different forms for the plan.

LUNDIN & BROWN, supra, § 97.4, at ¶ 3-4 (4th ed. rev. 2010) (footnote omitted).[9] See also In re Madera, 445 B.R. 509, 515-16 (Bankr. D.S.C. 2011); In re Maupin, 384 B.R. 421, 426 (Bankr. W.D. Va. 2007).

The Form Plan for the District of Nevada was issued by the Trustees to facilitate the administration of chapter 13 cases and completion of chapter 13 plans. Section 6.01 of the Form

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[8] A survey of adjacent judicial districts reveals that model or uniform Chapter 13 plans have been adopted or are suggested by the following bankruptcy courts: Arizona, Eastern California, Central California, Southern California, Northern California, Utah, Idaho, and Oregon.

[9] Judge Lundin also observed as follows: "Being cute or aggressive in the design of the Chapter 13 plan usually buys the debtor litigation and rarely facilitates confirmation or consummation of a plan. As intriguing as it is to walk the fringes of Chapter 13 practice, success on behalf of a Chapter 13 debtor more typically involves finding the mainstream and proposing treatments of creditors that are familiar to creditors, the trustee and the court." Id. at § 97.1, at ¶ 4. Similarly, being cute or aggressive in asserting the effect of a confirmed plan simply invites litigation that benefits no one. See, e.g., Glendon Rolfe and Pamela Rolfe, Case No. 10-25446-MKN, Order on Navient Solution, Inc.'s Motion to Vacate Judgment and Deny Debtors' Motion for Contempt, Docket No. 158, filed August 17, 2015 (vacating pursuant to FRCP 60(b)(6) a contempt order issued by default that was based on the alleged Chapter 13 discharge of interest on a nondischargeable student loan obligation).

Plan specifically allows for a debtor to propose additional or different plan provisions. For ease of identification, and therefore notice, Section 6.01 of the Form Plan directs that any proposed additional or different plan provisions must be set forth in Section 6.02 and thereafter rather than being interspersed throughout the Form Plan.[10]

The Crosby Firm and the Trustees are at loggerheads over entire sections as well as specific language in the Form Plan.[11] The Joint Hearing encompassed two specific sections of the Form Plan[12] for which the Debtors proposed alternate language in their Plan #5.[13] In Section

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[10] As an alternative method for identifying proposed additions and changes, a debtor's counsel could submit redlined versions of each plan amendment that would distinctively highlight any changes made to the prior version. That method, of course, would require the debtor's counsel to use color printers or color photocopiers that would add to the cost of serving an amended plan. Requiring all additions and changes to appear in one place assists the court, as well as parties in interest, in reviewing proposed plan revisions. There is a remaining drawback, however, when a plan proponent makes wholesale changes to all or most of the language of various sections: unless the changed language is underscored, stricken, or highlighted, the court as well as parties in interest must still conduct a line by line comparison of the sections to ascertain the differences.

[11] In another Chapter 13 case in this district, the Crosby Firm recently attempted to challenge the validity of an administrative order adopted in 2013 that essentially requires "conduit payment plans," i.e., payments through the chapter 13 trustees, of secured obligations where the debtor has defaulted. See Luis Manuel Gonzalez, Case No. 15-11374-LED, Memorandum Decision [on Debtor's Motion for Advisory Opinion, or in the Alternative, Motion to Strike Administrative Order 2013-04], Docket No. 42, filed August 6, 2015 (denying debtor's request for an advisory ruling and denying request to strike administrative order).

[12] As previously mentioned, the Trustee's opposition to proposed Plan #5 identified only two objections with respect to the Debtors' modifications. At the Joint Hearing, the Trustee also attempted to object to the Debtors' revision to Section 5.07 appearing in Section 6.02(f) of Plan #5. That revision, including highlighted strike outs and additions, is as follows: "**Section 5.07 - Creditors Shall Refund All Overpayments to the Trustee** - If a creditor withdraws its Proof of Claim after the Trustee has disbursed payments on such claim, the creditor shall refund all payments to the Trustee within 60 days of the withdrawal. If a creditor amends its Proof of Claim to assert an amount less than what was previously disbursed by the Trustee on such claim, the creditor shall refund the overpayment to the Trustee within 60 days of the amendment. If a creditor receives payment from the Trustee in excess of the amount asserted in its Proof of Claim or required to be paid under this Plan, the creditor shall refund the overpayment to the Trustee within 60 days of receiving the overpayment. Creditors shall not refund any payments or overpayments to the Debtor. If the Trustee pays funds to Debtor's attorney either in excess of any approved fees or in an amount which has not yet been approved by the Court, the Trustee shall notify in writing, Debtor's counsel of such overpayment. Debtors counsel shall, within 60

6.02 of Debtors' proposed Plan #5, the Crosby Firm proposes to strike out and add language to Sections 2.09 and 5.04 of the Form Plan.[14] Those strike outs and additions are mirrored in the plans proposed in the other cases. Debtors' proposed changes are as follows:

* **Section 2.09 - CLASS 1C - Administrative Expenses - DEBTOR'S ATTORNEY'S FEES** - As set forth in the Rule 2016(b) Disclosure of Compensation of Attorney for Debtor(s) filed in this case, Debtor's attorney's fees, costs, and filing fees in this case shall be $ ~~See 6~~4,800.0~~2~~0. The sum of $ ~~See 6~~778.0~~2~~0 has been paid to the attorney prior to the filing of the petition. The balance of $ ~~See 6~~4,022.0~~2~~0 shall be paid through the plan by the Trustee. This Compensation amount is only for basic services, and Debtors counsel retains the right to file a fee application for pre-confirmation services rendered, but which were not part of the basic services included in the compensation previously indicated. All fees are subject to review and approval by the Court. It is contemplated that the Debtor will continue to utilize the services of their attorney through the completion of the plan or until the attorney is relieved by Order of the Court. Debtor may incur additional attorney's fees post-confirmation ~~in an amount~~. The amount of pre-confirmation fees not part of basic services, and the anticipated post-confirmation fees which are likely to be incurred are estimated to be, ~~but not to exceed,~~ $ ~~See~~ 6,000..0~~2~~0. Such additional attorney's fees must be approved by the Court and will be paid through the plan by the Trustee. Additional attorney's fees must not render this Plan infeasible. ~~If Debtor incurs post-confirmation attorney's fees in excess of the amount stated above, Debtor must modify this Plan to provide for the payment of such fees.~~ The estimated amount of ~~post-confirmation~~additional attorney fees stated above will be used for the purpose of calculating feasibility of this Plan~~, but funds will not be reserved by~~

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days, either file a fee application seeking court approval of the fees or return said funds to the Trustee." This additional revision simply is not encompassed by the Joint Hearing.

[13] Trustees' counsel expressed their frustration with the efforts by the Crosby Firm to make wholesale changes to the Form Plan in other cases that must be resolved in separate hearings. The Trustees have also raised challenges to the practices of the Crosby Firm other than with respect to the Form Plan. See, e.g., Kathryn A. Bailey and Brian A. Volpe, Case No. 13-17059-MKN, Memorandum Decision on Trustee's Objections to Debtors' Claimed Exemptions, Docket No. 45 (denial of Trustee Yarnall's request to strike "100% FMV" language from debtors' exemption schedule). Section 6.01 of the Form Plan expressly accommodates a Chapter 13 debtor's desire to propose different plan language. However, as the Supreme Court has observed in another context, "[a]pparently no good deed goes unpunished." See Winter v. Natural Res. Defense Council, Inc., 555 U.S. 7, 31, 129 S.Ct. 365, 380 (2008)(Roberts, C.J.). Section 6.02 of the Debtors' proposed Plan #5 contains far more changes to the Form Plan than are encompassed by the Joint Hearing. Those changes will be addressed, if at all, in still more proceedings. In the event those other changes prove to be unreasonable or simply without merit, nothing prevents the Trustees, of course, from seeking sanctions under FRBP 9011 or objecting to the Crosby Firm's fees. Rather than continuing to wage a battle of death by a thousand emojis, the parties are far better off trying to reach a middle ground for each particular case.

[14] These proposed changes appear in Section 6.02 of Plan #5 at subsections (b) and (d).

~~the Trustee on account of such additional fees unless a request for the fees is properly filed with the Court.~~. Such estimated fees will be held in reserve by the Chapter 13 trustee, until the second to last month of the plan or if a 100% plan, until the trustee has paid all allowed unsecured claims. At that point, any of the additional attorney fees not approved by the Court or for which an Application for Fees is not pending, will be distributed pursuant to section 4.02. If the amount of additional attorney's fees exceeds the estimated amount specified in this section, and if funds are scheduled for unsecured creditors in section 2.19 and not otherwise required to be provided to unsecured creditors as liquidation value, Attorney's fees approved by the court may be paid with the funded listed in section 2.19, which will reduce the distribution to unsecured creditors. However, Trustee will not be required to recover any funds paid to unsecured creditors prior to the Court approving the fee application and which were not specifically reserved herein.

* **5.04 - Debtor's Duties** - In addition to the duties imposed upon Debtor by the Bankruptcy Code and Rules, the Local Rules, Administrative Orders, and General Orders, this Plan imposed the following additional duties on Debtor: **(a) Transfers of Property and New Debt** - Debtor is prohibited from transferring, encumbering, selling or otherwise disposing of any ~~personal property with a value of $1,000.00 or more or real property with a value of $5,000.00 or more~~non-exempt real property without first obtaining Court authorization. Except as provided in § 364 and § 1304, Debtor shall not incur aggregate new debt exceeding $1,000.00 without first obtaining Court authorization. A new consumer debt of less than $1,000.00 shall not be paid through this plan absent compliance with § 1305(c).[15]

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[15] In addition to the changes with respect to Section 5.04(a), Debtors' proposed Plan #5 also contains substantial modifications to some of the remaining portions of Section 5.04 as follows: "...**(d) Tax Returns** - ~~On or before April 20 of the year following the filing of this case and each year thereafter~~Starting from the Time Debtors file their Case, and proceeding each year until all payments under the plan have been made, Debtor shall submit to the Trustee copies of ~~any W-2 forms, 1098 forms, and 1099 forms.~~ all personal and/or business tax returns filed with any federal or state taxing authority, including any amendments or changes to any fax filings. Such copies will be provided to the Trustee within 60 days of filing with any federal or state taxing authority. **(e) Periodic Reports** - For each Class 4 claim, upon written request from the Trustee, the Debtor shall submit verification of payments on such claim to the Trustee ~~as least as frequently as once every six months and also upon the Trustee's request. Such submissions must demonstrate that each ongoing payment has been made by Debtor, meaning if Debtor submits verification to the Trustee once every six months Debtor must provide documentation demonstrating that all six payments were made during that interval~~for the time frame requested by the Trustee or for the preceding 12 months, whichever is shorter. Upon the Trustee's request, Debtor shall provide the Trustee with documents relating to a tax return filed while the case is pending and quarterly financial information regarding Debtor's business or financial affairs. Pursuant to § 521(f)(4), upon the Trustee's request Debtor shall provide the Trustee with a statement, under penalty of perjury, of Debtor's income and expenditures for the prior tax year, which shows how income, expenditures, and monthly income are calculated. **(f) Documents Required by the Trustee** - In addition to the documents required by the Bankruptcy Code and Local Rules, Debtor shall provide the Trustee not later than the first date set for the § 341

Debtors' proposed changes to the Form Plan may have significance not only to the four other cases involved in the Joint Hearing, but potentially to Chapter 13 practice generally in this district.[16]

The Trustee primarily argues that the Debtors' proposed changes unduly interfere with the efficiencies sought through the adoption of the Form Plan. See Trustee Brief at 2:22 to 4:16. The benefits of a form plan were previously discussed at 7, supra. Because no two individuals are exactly alike, however, even form plans must allow for the particular needs of a particular debtor to be addressed. Section 6.01 of the Form Plan recognizes the obvious and provides that any proposed changes are to be set forth in Section 6.02. So when Local Rule 3015 directs Chapter 13 debtors to use the Form Plan issued by the Chapter 13 trustees, and the Form Plan itself includes a provision for non-standard language, it can hardly be a violation of the efficiencies of a form plan for a debtor to do exactly what the Form Plan actually permits. Instead, the correct inquiry is whether the Debtors' proposed Plan #5 satisfies the requirements

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meeting: (1) written notice of the name and address of each person to whom Debtor owes a domestic support obligation together with the name and address of the relevant State child support enforcement agency [see 42 U.S.C. § 464 & § 466]; (2) a ~~wage order if requested by the Trustee; (3) a~~ Worksheet and Authorization to Release Information for each Class 2 claim~~;~~. Upon specific request and ~~(4)~~prior to the confirmation of the plan, the Debtor shall provide to the Trustee IRS Form 8621 and IRS Form 4506. **(g) Documents Required by Trustee Prior to Discharge of Debtor** - ~~W~~After payments have been completed under the plan and within 30 days of the ~~completion of the plan, Debtor shall certify to the Court with a copy to the Trustee the following: (1) of the name and address of each person to whom Debtor owes domestic support obligation at that time together with the name and of the relevant State child support enforcement agency [see 42 U.S.C. § 464 & § 466]; (2) Debtor's current address; (3) the name and address of Debtor's current employer; (4) the name of each creditor whose claim was not discharged under § 523(a)(2); (5) the name of each creditor that was reaffirmed by Debtor under § 524(c); (6) a certificate of completion of an instructional course in Personal Financial Management; and (7) a Notarized Declaration Regarding Domestic Support Obligations stating Debtor is current on such obligation(s)~~issuance of the Standing Trustee's Final Report and Account, Debtor shall file with the Court the appropriate Debtor's Certificate of Compliance with Conditions Related to Entry of Chapter 13 Discharge." These additional revisions no doubt cause the Trustee considerable heartburn, see Trustee Brief at 8:26 to 9:9, but are not encompassed by this Joint Hearing.

[16] A national form Chapter 13 plan currently is under discussion before the Advisory Committee on Bankruptcy Rules for the Judicial Conference of the United States Courts, but does not contain comparable provisions addressing either attorney's fees or a restriction on post-confirmation property transfers.

for confirmation under Section 1325. Mindful that the Debtors bear the burden of proof, the Trustee's objections that are the subject of the Joint Hearing are discussed below.

I. Reservation of Attorney's Fees for Debtors' Counsel.

FRBP 2016(b) requires every debtor's attorney to file the statement required by Section 329 of the Code. That statement must disclose the compensation paid or agreed to be paid by the debtor to the attorney for services rendered or to be rendered in the bankruptcy case, and the source of the compensation. 11 U.S.C. § 329(a).[17] If the court determines that the agreed compensation exceeds the reasonable value of the services rendered, the court may cancel the agreement or order the attorney to return any excess payment to the bankruptcy estate, or to the entity that made the payment. 11 U.S.C. § 329(b).

Section 2.09 of the Form Plan requires the debtor to set forth the information contained in the 2016 Statement as the amount of attorney's fees to be paid through the proposed plan, with all fees subject to court approval. Section 2.09 of the Form Plan further acknowledges that counsel will continue to provide services until completion of the plan, i.e., typically until all plan payments are completed. It then provides for the debtor's post-confirmation attorney's fees to be estimated in a maximum amount, i.e., "not to exceed" a specified figure. Those additional postconfirmation estimated fees are subject to court approval and will be payable through the plan. With respect to these estimated postconfirmation fees ("Additional Fees"), Section 2.09 sets forth three conditions: (1) the Additional Fees must not render the confirmed plan infeasible, (2) if the actual postconfirmation fees exceed the estimated Additional Fees, the confirmed plan must be modified, and (3) no funds will be reserved by the Chapter 13 trustee to pay such Additional Fees, "unless a request for the fees is properly filed with the Court." Section 2.09 of

[17] On November 14, 2014, the Crosby Firm filed a Disclosure of Compensation of Attorney for Debtor(s) as required by FRBP 2016(b) ("2016 Statement"), attesting that the Debtors have agreed to pay $4,800.00 for services rendered in the case, that Debtors have paid $778.00 as of the petition date, and that a balance of $4,022.00 remains due. (ECF No. 23). That 2016 Statement did not specify in Item 6 the services that are not included in the fee. On August 20, 2015, the Crosby Firm filed an amended 2016 Statement that does specify the services excluded from the fee, and also more precisely identifies the services that are included in the fee. (ECF No. 105).

the Form Plan also makes clear that the estimated Additional Fees will be considered in calculating plan feasibility.

As may be apparent from the strike outs and additions previously highlighted, the Crosby Firm proposes six significant changes to Section 2.09 of the Form Plan. The first change is to characterize the amount set forth in the 2016 Statement as being "only for basic services" and to reserve to the Crosby Firm the ability to file a fee application for pre-confirmation services that were not part of those basic services ("Non-Basic Services").[18] The second change is to alter the meaning of "Additional Fees" to include an estimate of both the anticipated post-confirmation attorney's fees as well as pre-confirmation Non-Basic Services. The third change is to eliminate the cap on estimated Additional Fees by deleting the words "not to exceed" from the amount stated. The fourth change is to eliminate the requirement for a modification of the confirmed plan in the event that post-confirmation attorney's fees exceed the estimated Additional Fees. The fifth change is to specifically impose upon the Chapter 13 trustee a duty to reserve funds

[18] Unlike many other districts, Nevada does not have a local rule or general order that authorizes "no look" fees for Chapter 13 cases. See In re James J. McDonough, Case No. 07-50276-MKN, Memorandum Decision on Confirmation of Chapter 13 Plan ("McDonough Decision") at 3-4 & n.5, Docket No. 23, filed October 12, 2007. Perhaps because a no look fee does not exist, Nevada reportedly is one of the three states having the highest mean Chapter 13 fees in the nation. See Lois R. Lupica, The Consumer Bankruptcy Fee Study - Final Report, 20 Am. Bankr. Inst. L. Rev. 17, 62 (2012). No look fees are not prohibited by the Bankruptcy Code. See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 599 (9th Cir. 2006). Because Nevada has not adopted a no look fee system for Chapter 13 practice, there is no local rule or general order in this district clearly articulating the "basic services" required of counsel seeking compensation in Chapter 13 proceedings. The basic services set forth in the Crosby Fee Agreement, see note 4, supra, may or may not be sufficient. At least one decision in this district recognized that there are services so fundamental to the relief sought by a particular debtor that such services may not be "unbundled" from the attorney's representation of the client. See In re Seare, 493 B.R. 158, 188-190 (Bankr.D.Nev. 2013), aff'd, 515 B.R. 599 (B.A.P. 9th Cir. 2014) (attorney's unbundling of adversary proceeding representation in a Chapter 7 case was unreasonable where the filing of a fraud-based nondischargeability complaint was a near certainty). The scope of basic services or the meaning of non-basic services in Chapter 13 cases has never been established by local rule or case law. Accordingly, the "basic services" language suggested by Section 2.09 of the Debtors' proposed Plan #5 is so imprecise as to be meaningless in determining the estimated Additional Fees.

from the debtor's plan payments sufficient to satisfy all estimated Additional Fees.[19] The sixth change is to allow debtor's counsel to apply for even more fees in the event that the estimated Additional Fees are insufficient, and to forego modifying the confirmed plan if there are funds that would otherwise be available for distribution to general unsecured creditors under Section 2.19 of the Form Plan.[20] On their face, these changes to Section 2.09 of the Form Plan are primarily designed to benefit the Crosby Firm by assuring that there are funds available to pay its approved fees throughout the period leading to completion of plan payments.[21] At the Joint

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[19] Among other things, Section 2.09 of Debtors' proposed Plan #5 includes plainly misguided language stating as follows: "At that point, any of the additional attorney fees not approved by the Court or for which an Application for Fees is not pending, will be distributed pursuant to section 4.02." (Emphasis added). This specific additional language simply confuses the distribution of funds with the payment of allowed claims. Unapproved attorney's fees are not funds at all and therefore do not get distributed. Instead, unapproved attorney's fees are simply disallowed claims that do not get paid. Section 4.02 of the Form Plan, unaltered in proposed Plan #5, sets forth the order in which the available funds will be paid by the Chapter 13 trustee, with attorney's fees being fourth in priority in Class 1. Only allowed claims, including allowed attorney's fees in Class 1, would receive a distribution under a confirmed plan.

[20] In Section 6.02 of Plan #5, there is no amendment proposed to Section 2.19 of the Form Plan. The second sentence of Section 2.19 provides: "Pursuant to the terms of this Plan, the amount available for disbursements to general nonpriority unsecured claims may change based upon the allowed claim amounts, amended claims, interest rates, additional attorney's fees as set forth in Section 2.09 of this Plan, and/or any other administrative expenses." (Emphasis added).

[21] Plan #5 was filed on March 5, 2015. On May 18, 2015, the Supreme Court issued its decision in Harris v. Viegelahn, 135 S.Ct. 1829 (2015). Harris involved a Chapter 13 debtor who confirmed a plan and later converted to Chapter 7. At the time of conversion, the Chapter 13 trustee held $5,519.22 that had not been distributed to creditors in accordance with the confirmed plan. 135 S.Ct. at 1836. Because the funds were from postbankruptcy earnings of the debtor, Section 541(a)(6) dictated whether the earnings were property of the estate. In Chapter 7, the earnings were excluded; in Chapter 13, the earnings were included under Section 1306(a)(2). Id. at 1834. [The cited page from the advance opinion in Harris refers to Section 541(a)(1), but postpetition earnings of an individual debtor are specifically addressed by Section 541(a)(6).] At the time of conversion to Chapter 7, the Chapter 13 trustee was terminated and she was not authorized to make plan distributions to creditors. Id. at 1838. Because the conversion to Chapter 7 was effective as of the bankruptcy petition date pursuant to Section 348, all of the postpetition earnings were excluded from the Chapter 7 estate and belonged to the debtor. The Court specifically rejected any notion that confirmation of a Chapter 13 plan gives creditors a vested right to the funds held by a Chapter 13 trustee. Id. at 1839, citing In re Michael, 699 F.3d 305, 312-13 (3rd Cir. 2012). For that reason, the Chapter 13 trustee's postconversion distribution to creditors was not authorized and the funds had to be returned to the debtor. The

Hearing, the Crosby Firm unabashedly acknowledged that their risk of nonpayment was being shifted to general unsecured creditors. The risk is, of course, magnified by elimination of the requirement for amending the confirmed plan when counsel seeks fees in excess of the estimated Additional Fees.[22] The Crosby Firm also argued, however, that requiring the Chapter 13 trustee to reserve the estimated Additional Fees is appropriate to assist the Debtors because debtors often would not have funds available to pay for additional services unless the Chapter 13 trustee has been reserving portions of their plan payments for future fees. In other words, the Crosby Firm suggests that the reservation of the estimated Additional Fees benefits not only the attorneys, but also the clients by creating a contingency fund for any necessary post-confirmation services.[23]

Court discussed the problems that may occur if Chapter 13 trustees hold debtors' postpetition earnings for prolonged periods of time without making distributions to creditors, only to have those funds be returned to debtors upon conversion to Chapter 7. Id. The Court suggested that a schedule of regular disbursement of funds be adopted as a possible solution. Id. at 1839-40. Whether such a schedule can include disbursement of funds to Chapter 13 counsel for estimated future postconfirmation services was not addressed.

[22] Because Section 2.19 of the Form Plan, see note 20, supra, specifically states that the amount available for distribution to general unsecured creditors may change based on additional attorney's fees allowed under Section 2.09, the Crosby Firm argues that sufficient notice has already been provided to general unsecured creditors, thereby eliminating the necessity to modify the confirmed plan.

[23] The desire to protect Chapter 13 debtors from themselves is not new. In In re Smith, 419 B.R. 826 (Bankr. C.D. Cal. 2009), aff'd, 435 B.R. 637 (B.A.P. 9th Cir. 2010), the bankruptcy court concluded in three separate cases that the debtors were ineligible for Chapter 13 relief because the amount of unsecured debt created by the plummeting housing market had to be counted towards the unsecured debt limit under Section 109(e). The bankruptcy court felt bound to follow the Ninth Circuit's prior decision in Scovis v. Henrichsen (In re Scovis), 249 F.3d 975 (9th Cir. 2001), but questioned its continued vitality in light of the real estate crisis evident to the court. 419 B.R. at 832-33. The bankruptcy court issued an order dismissing the case on eligibility grounds, but stayed the order to allow it to be appealed. In affirming the dismissal order, the bankruptcy appellate panel noted that in addition to staying the dismissal order, the bankruptcy court also had confirmed the debtors' Chapter 13 plan so that the debtors could continue making plan payments. The purpose of the continued plan payments was to prevent the appeal of the dismissal order from being rendered moot by the debtors' inability to perform a plan. 435 B.R. at 641 & n. 5. In the present case, the Crosby Firm arguably is attempting to avoid a similar fate for their clients by reserving sufficient funds for any necessary post-confirmation services. For this reason, counsel suggests that its interest in reserving sufficient funds for possible future services does not conflict and is consistent with their clients' interest in

Having considered the arguments and representations of the parties, the court concludes that the Debtors' proposed revisions to Section 2.09 are neither appropriate nor consistent with the Bankruptcy Code.

First, the court agrees with the Trustee that the scope of "basic services" for a Chapter 13 case has not been established in this judicial district, see Trustee Brief at 5:15-18, due largely to the failure to adopt a rule authorizing a "no look" fee. See discussion at note 18, supra. That scope will vary from attorney to attorney, and law firm to law firm, depending on the complexity of the cases each professional is willing to undertake. As discussed at the Joint Hearing, the nature of a consumer bankruptcy practice in a competitive environment is influenced by the amount charged to prospective clients. As a result, attorneys and law firms may be reluctant to charge high, but perhaps more realistic up-front fees for their services, so as not to scare away or discourage clients. Limiting the basic services included in the representation may be primary means for some attorneys and law firms to compete.[24] Absent an objective measure, however, the delineation of basic services and therefore presumably non-basic services, creates an artificial distinction without a useful difference. Under the circumstances, these suggested revisions serve no purpose and therefore are inappropriate.

Second, the scope of the estimate of Additional Fees is impracticable. By itself, the act of estimating and approving future fees and expenses is not extraordinarily difficult: parties in bankruptcy frequently ask the court to do so in connection with attorney fee carve outs in Chapter 11 proceedings, estimated cash collateral budgets for Chapter 7 trustees, and the like. In this instance, the Crosby Firm seeks authority to apply not simply for post-confirmation Additional Fees, but also to include pre-confirmation fees for legal services that somehow were excluded from the so-called basic fees, and somehow were not known or provided prior to plan confirmation. This approach raises more questions than it answers. For example, at the time of

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completing their Chapter 13 plan.

[24] This is more typically played out in the "unbundling" of legal services and more commonly in Chapter 7 proceedings. See, e.g., description of the Seare decision in note 18, supra.

plan confirmation, just how does the court, or for that matter the Chapter 13 trustee, estimate the amount or value of essential legal services that the Debtors' counsel somehow forgot to provide? If the services are essential, then how can the proposed plan be ready for confirmation? If the services are not essential, then why can't they be performed after confirmation and be included in the estimate contemplated by the current language of Section 2.09 of the Form Plan?

As it now stands, Section 2.09 of the Form Plan requires both an estimate of only post-confirmation fees and for that estimate of post-confirmation fees to be used to calculate plan feasibility. Moreover, Section 2.09 of the Form Plan also provides and discloses to creditors that the debtor may incur additional post-confirmation attorney's fees that are estimated to be, but are not to exceed the amount specified. By expanding the scope of the Additional Fees to include pre-confirmation attorney's fees, and then eliminating the cap on the total amount of all Additional Fees, application of the best interest test under Section 1325(a)(4) as well as the determination of plan feasibility under Section 1325(a)(6) is made more difficult at best. At worst, the task may be rendered impossible.

Third, requiring the Chapter 13 trustee to reserve estimated Additional Fees solely for Debtors' counsel creates a duty that simply does not exist. The duties of a Chapter 13 trustee are enumerated in Section 1302(b) and none of them encompass the creation of non-statutory methods to protect attorneys from the financial risks of their chosen profession.[25] In contrast, once a plan is confirmed, Section 1326 requires the Chapter 13 trustee to distribute payments in accordance with the plan "as soon as is practicable." 11 U.S.C. § 1326(a)(2).[26] There may be

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[25] On one occasion, an attorney in this district even suggested that the amount of Chapter 13 fees awarded in one case should take into account counsel's risk of not being paid in other cases. That shameless suggestion, of course, was rejected. See McDonough Decision at 9:1-7.

[26] In her opposition, the Trustee refers to Section 1326 and Section 1302(b)(3) as the sources of her duty to make timely distributions. See Trustee Brief at 6:11. Section 1326(a)(2) clearly supports the Trustee's position, but the latter provision is an odd duck that imposes a duty under the Code for a Chapter 13 trustee to "dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act." 11 U.S.C. § 1302(b)(3). There simply is no reason for a Chapter 13 trustee appointed under the Code to administer funds in a case under Chapter XIII of the Bankruptcy Act because such cases do not exist. See 8 COLLIER ON

valid reasons for a Chapter 13 trustee to delay a distribution, such as to allow a claim objection to be resolved or a loan modification to be approved. But inserting a plan provision to otherwise delay the distribution of available funds to creditors solely to protect fees potentially earned by the Chapter 13 debtor's counsel, is plainly inconsistent with Section 1326(a)(2).[27]

Finally, counsel's reliance of the existing language of Section 2.19 of the Form Plan, see note 20, supra, to provide notice of a possible reduction in payments to general unsecured claims, is ill-conceived. While the language of Section 2.19 does inform all parties that changes to unsecured claim disbursements may occur, it does not specify whether such disbursements will be increased or reduced. Section 1329(a) of the Code allows a confirmed Chapter 13 plan to be modified to increase or decrease the amount of payments on claims of a particular class. See 11 U.S.C. § 1329(a)(1). Modifications encompassed by Section 1329(a) are permitted only after notice and a hearing. See 11 U.S.C. § 1329(b)(1).[28] The provisions of Section 2.19 of the Form Plan are not inconsistent with Section 1329 of the Code, but the alternate language eliminating the plan modification requirement in Section 2.09 of the Debtors' proposed Plan #5 is inconsistent with the Code.

For these reasons, Debtors have failed to meet their burdens of proof and persuasion with

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BANKRUPTCY, ¶ 1302.3[h] (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2015).

[27] The unfairness of this proposal is amplified by the Supreme Court's conclusion in Harris: because a Chapter 13 trustee has no authority to distribute funds to creditors once a Chapter 13 case is converted to Chapter 7, delaying distributions to other creditors may deprive them of their only hope of receiving any payment on their claims. Similarly, if a Chapter 13 case is dismissed, delaying distributions to other creditors may deprive them of any hope of payment without having to pursue collection litigation outside of bankruptcy. Without the bankruptcy process to shepherd their claims, many of those creditors likely would give up.

[28] The bankruptcy appellate panel for this circuit recently treated a secured creditor's failure to object to a proposed Chapter 13 plan provision as an acceptance of plan treatment under Section 1325(a)(5)(A) where the secured creditors had sufficient notice. See Bronitsky v. Bea (In re Bea), 533 B.R. 283, 288-91 (B.A.P. 9th Cir. 2015). The panel did not address the notice and hearing requirements under Section 1329(b) for modifying a confirmed Chapter 13 plan. Not even the broadest interpretation of cases such as Bea would suggest that a general unsecured creditor having notice of the language in Section 2.19 somehow waives the requirement for notice and a hearing of a plan modification that reduces the payment on its claim.

respect to this aspect of their proposed Plan #5. Because Plan #5 cannot be confirmed for this reason alone, it is not essential to reach the Trustee's objection with respect to the Debtors' revisions to Section 5.04(a).[29] For the reasons discussed below, however, the additional revisions proposed in Plan #5 also require that confirmation be denied.

II. Restrictions on Transfer of Debtors' Property.

Local Rule 4002(a) is entitled "Transfers of property and new debt." It specifically states that "Debtors are prohibited from transferring, selling, or otherwise disposing of any nonexempt personal property with a value of $1,000 or more or nonexempt real property with a value of $5,000 or more other than in the regular course of their financial or business affairs without court approval. Except as provided in 11 U.S.C. § 364 and § 1304, debtors may not incur aggregate new debt exceeding $1,000 without court approval." (Emphasis added).

Section 5.04(a) of the Form Plan also is entitled "Transfers of Property and New Debt" but states: "Debtor is prohibited from transferring, encumbering, selling or otherwise disposing of any personal property with a value of $1,000.00 or more or real property with a value of $5,000.00 or more without first obtaining Court authorization. A new consumer debt of less than $1,000.00 shall not be paid through this plan absent compliance with § 1305(c)." Section 5.04(a) of the Form Plan differs from Local Rule 4002(a) in that it prohibits the Debtors from transferring, encumbering, selling or disposing of both exempt and non-exempt property without court approval, and makes no exception for such actions taken in "the regular course of their financial affairs or business affairs."

Section 5.04(a) of Debtors' proposed Plan #5 takes the language of Section 5.04(a) of the Form Plan, but then reduces its transfer prohibition to non-exempt real property of any value. In other words, under Section 5.04(a) of the Debtors' plan, prior court authorization is required only when the Debtors transfer, encumber, sell or dispose of non-exempt real property. The net effect of this revision is that after plan confirmation, the Debtors are permitted to transfer, encumber,

[29] Because the court is only denying plan confirmation but not dismissing the Chapter 13 case, the court's order will not be appealable. See Bullard v. Blue Hills Bank, 135 S.Ct. at 1693-94. Nonetheless, the court will briefly address the remaining issue encompassed by the Joint Hearing.

sell or dispose of any personal property, both exempt and non-exempt, regardless of value, without necessity for court authorization.

Debtors maintain that Section 5.04(a) of the Form Plan is inconsistent with the Bankruptcy Code because it restricts their ability to transfer exempt personal property and exempt real property, neither of which are property of the bankruptcy estate. See Debtor Brief at 10:13-20.[30] Because the best interests of creditors under Section 1325(a)(4) of the Code is determined by the liquidation value of nonexempt assets, Debtors argue that the restrictions on their transfer of exempt property is unnecessary to determining confirmation of their proposed Plan #5. Id. at 11:5-9.[31] Moreover, Debtors maintain that any fear that they would liquidate all of their exempt assets and then attempt to remain in bankruptcy by converting to Chapter 7, would be ameliorated by assessing their good faith. Id. at 11:16-19.

In opposition, the Trustee argues simply that Section 5.04(a) of Plan #5 does not comply with Local Rule 4002(a) and that the Debtors are not excused from compliance. See Trustee Brief at 8:3-18. Moreover, the Trustee maintains that because the Debtors admittedly have no non-exempt assets, see Debtor Brief at 12:19-21, the proposed revisions to Section 5.04(a) of the Form Plan are unnecessary. Id. at 8:19-25.

Like two emails crossing through cyberspace, Debtors' response to the Trustee is that neither parties' version of Section 5.04(a) is consistent with Local Rule 4002(a), but that the

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[30] At the plan confirmation stage, any objections to a debtor's claimed exemptions presumably have been timely raised under FRBP 4003(b)(1) and have been resolved.

[31] As previously mentioned at 5, supra, confirmation of a Chapter 13 plan requires, inter alia, that unsecured creditors be paid at least what they would receive in a Chapter 7 liquidation, and that the debtor have the ability to make the payments required by the plan. Where an individual debtor has no non-exempt assets, meeting the liquidation value requirement is not difficult because unsecured creditors in Chapter 7 would receive no distribution. Where the same individual debtor has limited income to make other payments required by the plan, however, use of the exempt assets to make such payments is permissible. For example, if an individual must draw funds from an individual retirement account that is exempt under NRS 21.090(1)(r)(1) in order to make Chapter 13 plan payments on a residential mortgage, the language of Section 5.04(a) of the Form Plan apparently requires the debtor to incur the cost of seeking court approval to spend money that is not even property of the estate.

Debtors' version is preferable. See Debtor Reply at 7:5-22.[32] Debtors do not respond at all, however, to the Trustee's assertion that they have no non-exempt assets that would be impacted by their proposed revisions to Section 5.04(a).

Having considered the arguments and representations of the parties, the court concludes that the Debtors' proposed revisions to Section 5.04(a) are unnecessary and therefore not appropriate.

For these Debtors, the changes to Section 5.04(a) in proposed Plan #5 have no impact because these Debtors admittedly have no non-exempt property.[33] The transfer restrictions contained in the Form Plan therefore raise no controversy that this court can or should decide.

Moreover, revisions to the Local Rules of this court, including Local Rule 4002(a), presently are under consideration by the bankruptcy judges in this district. Presumably, any changes to Local Rule 4002(a) will be incorporated by the Chapter 13 Trustees into the Form Plan. Those changes may address or eliminate whatever concerns, if any, that this court shares as to the current language of the Local Rule.[34]

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[32] Debtors also criticize the language of Local Rule 4002(a) that lifts the restrictions on Chapter 13 debtors with respect to transactions "in the regular course of their financial or business affairs." Debtors, or at least their counsel, maintain that a typical consumer could believe that any disposition of their personal property would be in the regular course of their business or financial affairs. See Debtor Brief at 10:21 to 11:4. The phrase "regular course of their business or financial affairs" appears to be derived from Sections 363(b) and 363(c) of the Code that restrict the use, sale or lease of estate property other than in "the ordinary course of business." Sections 363(b) and 363(c) apply in Chapter 13 proceedings pursuant to Section 1303 and Section 1304(b). It is not altogether clear how or why the ordinary course of business language in Sections 363(b) and (c) morphed into the "regular course of business or financial affairs" language found in Local Rule 4002(a). On more than one occasion, Chapter 13 debtors have appeared before the court seeking authorization nunc pro tunc for expenditures that they did not know were encompassed by the "regular course" language. A revision to this language in Local Rule 4002(a) may well be appropriate.

[33] Presumably, the Chapter 13 debtors involved in the other four cases considered at the Joint Hearing do have exempt property that is affected by Section 5.04(a) of their proposed plans. If not, the language of Section 5.04(a) should never have been raised as a matter for consideration by all of the active judges at a specially convened Joint Hearing.

[34] Debtors' concerns about the language included in Local Rule 4002(a) may have merit. On its face, that rule restricts an individual's ability to use assets that may have begun as property

For these reasons, Debtors also have failed to meet their burdens of proof or persuasion with respect to this aspect of their proposed Plan #5.

CONCLUSION

For the reasons discussed, Debtors have failed to demonstrate that their proposed Plan #5 meets the requirements for confirmation under Section 1325. A separate order denying confirmation has been entered contemporaneously with this Memorandum Decision.

Copies sent to all parties via BNC

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of the individual's bankruptcy estate, but were removed from the estate through a proper claim of exemptions. See In re Mwangi, 473 B.R. 802, 809 (D. Nev. 2012) (property of the estate claimed as exempt "is exempt from property of the estate and passes to the debtor upon expiration of the time to object."). Under Section 522(b), all individual debtors who seek bankruptcy relief "may exempt property from the estate." 11 U.S.C. § 522(b)(1). Local Rule 4002(a) is one part of a local rule applicable only to Chapter 13 cases and imposes duties only on Chapter 13 debtors prior to plan completion. The duties encompassed by Local Rule 4002(a) specifically apply throughout the life of the Chapter 13 case, even after a plan is confirmed and even after the deadline for objecting to the debtor's exemptions has expired. There is no similar local rule restricting the ability of an individual Chapter 7 debtor, an individual Chapter 11 debtor, or an individual Chapter 12 debtor from using their assets after the assets are no longer property of the bankruptcy estate. While Section 363 requires a trustee or debtor in possession to obtain court authorization prior to using property of the bankruptcy estate outside of the ordinary course of business, there is no such restriction on the use of assets that are removed from the bankruptcy estate. Enforcement of this portion of Local Rule 4002(a) appearing in Section 5.04(a) of the Form Plan may be contrary to FRBP 9029(a)(2) to the extent it causes an individual Chapter 13 debtor to lose a right to use assets that are not property of the estate. It therefore appears that Local Rule 4002(a) may be over-inclusive and inconsistent with the Code.